Supreme Court, U. S.
FILED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1109

SHEARN MOODY, JR.,
Petitioner,

v.

STATE OF ALABAMA, *ex rel.*
CHARLES H. PAYNE, etc., *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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February 7, 1978

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

The petitioner Shearn Moody, Jr., prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Alabama, entered in this proceeding on September 9, 1977.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama is reported at 351 So.2d 552, and is reprinted in the Appendix hereto, p. 2a, *infra.*

The order of the Circuit Court of Jefferson County, Alabama, denying leave to file a federal antitrust complaint in

a federal court, is unreported; it is reprinted in the Appendix hereto, p. 9a, *infra*. No opinion accompanied that order of denial.

JURISDICTION

The judgment of the Supreme Court of Alabama, which denied a writ of mandamus to review the refusal by the Circuit Court to permit a federal antitrust action to be filed in a federal court, was entered on September 9, 1977. A timely motion for rehearing was entertained and denied on November 10, 1977. See Appendix hereto, p. 1a, *infra*. This petition for certiorari is being filed within 90 days following the denial of rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether a state court is wholly without power, by virtue of the Supremacy Clause of the United States Constitution, to enjoin or to refuse to permit the filing of an *in personam* federal antitrust suit in a federal court on the ground that (a) a corporate receivership proceeding pending in the state court is considered an *in rem* proceeding, and (b) the filing of the antitrust suit would allegedly interfere with, delay and eventually stop the state receivership proceeding.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Article VI, second clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme

Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

The narrow but important issue in this case arises out of the following sequence of events:

(1) In 1972, on complaint of the State of Alabama, the Empire Life Insurance Company of America [hereinafter Empire]was placed in receivership, being allegedly impaired and insolvent. Empire was also placed in ancillary receiverships in Arkansas, Montana and Texas. In 1974, the receivership court in Alabama determined that Empire was insolvent and that reinsurance of the Empire policies was necessary to protect the interests of the policyholders. The Empire receivership is now an accomplished fact; its primary assets have been transferred to the Protective Life Insurance Company, which has reinsured the Empire policies.

(2) The petitioner herein, Shearn Moody, Jr., was allowed to intervene in the Alabama receivership proceedings in his capacity as principal stockholder and former chairman of the board of Empire. He has consistently and vigorously protested the receiverships and the dissolution of Empire, and has contended that the assets of Empire have been grossly undervalued to make it appear insolvent.

(3) On January 5, 1975, on application of the Alabama receiver [John G. Bookout, who was also the state commissioner of insurance], the receivership court in Alabama issued an injunction directed generally to all present and former policyholders, stockholders and agents of Empire and in particular to the petitioner Shearn Moody, Jr. Such persons were restrained, unless they "shall first receive the prior ap-

proval of this Court," from filing or aiding in the filing of any lawsuit, complaint or legal claim, or any amendment thereto, "in any court wheresoever located on behalf of any party whatsoever" that in any way named or related to (a) the Alabama receiver, (b) the ancillary receivers in the other states, (c) the affairs of Empire, including its receivership and its reinsurance requirement, or (d) any judicial decree implementing the receivership. This injunction was approved by the Supreme Court of Alabama in *Moody v. State ex rel. Payne*, 295 Ala. 299, 329 So.2d 73 (1976), at least as it was applied there to restrain suits arguably to remove assets from the *res* of the Alabama receivership proceedings.

(4) In June of 1975, Moody requested permission from the Alabama receivership court to file an amended counterclaim in a civil action then pending in the United States District Court for the Northern District of Texas. The receivership court granted such permission. But the federal court thereafter denied leave to amend the counterclaim, presumably because such an amendment might delay trial of the action. Significantly, this proposed amendment to the counterclaim would have set forth precisely the same federal antitrust cause of action as that now sought to be filed as an original action.

(5) In May of 1976, the petitioner Moody sought leave of the receivership court to file the federal antitrust claims in the form of a new or original complaint, which was to be filed in the federal district court in Texas. Named as defendants in the proposed complaint were (a) the State of Texas,[1] (b) the Alabama receiver, Mr. Bookout, (c) the former Arkansas insurance commissioner, Mr. Horne, (d) the former Texas insurance commissioner, Mr. Cotten, and (e) the present Arkansas insurance commissioner, Mr. Sykes.[2]

[1] In June of 1975, the Governor of Texas approved a concurrent resolution of the Texas legislature that granted permission to Moody to sue the State of Texas for any wrongful acts committed by state agents and officials during the course of the Empire receivership proceedings. Texas House Concurrent Resolution No. 118, approved June 19, 1975.

(6) The proposed antitrust complaint recited that the action arose under Section 1 of the Sherman Act, 15 U.S.C. §1, and under Section 4 of the Clayton Act, 15 U.S.C. §15, as well as under the laws of Texas for tortious interference with the business relationship between Moody and Empire. The named defendants were alleged to have entered into various illegal schemes and conspiracies among themselves and others to use the powers of their respective public offices (a) to wrest control from Moody of the management of Empire's affairs, (b) to interfere with Moody's various business relationships with Empire, (c) to prohibit Moody from conducting business through Empire, (d) to place Empire in receivership, (e) to prevent its rehabilitation, (f) to destroy Moody's insurance business and to eliminate and destroy Empire as a viable entity competing in the insurance business in Alabama, Texas, Arkansas and elsewhere. All of these illegal actions were alleged to have been done for the defendants' own personal and political purposes and profits. The complaint further asserted that Moody had been damaged in an amount in excess of $10,000,000, and that he was entitled to treble damages pursuant to Section 4 of the Clayton Act.

(7) On November 27, 1976, the Alabama receivership court denied Moody's motion for permission to file this an-

[2] The proposed complaint would have been captioned *Shearn Moody, Jr. v. The State of Texas, John G. Bookout, Alan W. Horne, Clay Cotten, and A. Gene Sykes.*

trust complaint. See Appendix hereto, p. 9a, *infra.* No reasons were given for the denial; nor was any reference made to the earlier permission given to file the antitrust claims as an amendment to the counterclaim in the same federal court in Texas.

(8) On September 9, 1977, the Supreme Court of Alabama denied mandamus and affirmed the action of the receivership court in denying leave to file the federal antitrust complaint. See Appendix hereto, p. 2a, *infra.* The court expressly considered and rejected petitioner's claim, grounded on the Supremacy Clause of the United States Constitution as interpreted in *Donovan v. City of Dallas,* 377 U.S. 408 (1964), that the receivership court was completely without power to restrain access to a federal court to file an *in personam* federal antitrust suit for money damages. Relying upon its earlier opinion in this proceeding, *Moody v. State ex rel. Payne,* 295 Ala. 299, 329 So.2d 73 (1976), the court deemed the receivership proceeding to be *in rem* in nature, thus bringing to the fore the exception mentioned in *Donovan* to the effect that a state court having custody of property has exclusive jurisdiction to proceed and to enjoin the institution of any other court action that might interfere with or embarrass the *in rem* action. The proposed federal antitrust action was interpreted as being of that nature, as being "nothing more than another ploy of Moody's to interfere with, delay and eventually stop the Empire receivership proceeding."

REASONS FOR GRANTING THE WRIT

The decision below is in direct conflict with the Supremacy Clause of the Constitution, as well as with the implementing principles announced by this Court in *Donovan v. City of Dallas,* 377 U.S. 408 (1964), and *General Atomic*

Co. v. Felter, 434 U.S. ____, 98 S.Ct. 76, 54 L.Ed.2d 199 (1977). That conflict expresses itself in several ways:

I

The basic doctrine stemming from the *Donovan* and *General Atomic* decisions is that "state courts are completely without power to restrain federal-court proceedings in *in personam* actions." 377 U.S. at 413; 98 S.Ct. at 78. The right to litigate in federal courts is granted by Congress and cannot be diluted or taken away by state courts. The Supremacy Clause dictates that proposition.

The decision below cannot be squared with this constitutional doctrine. The Alabama Supreme Court has ruled that state courts do have power to restrain the institution in a federal court of what plainly is an *in personam* antitrust suit. Such power has been asserted despite the fact that Congress has conferred exclusive jurisdiction on the federal courts to consider and resolve *in personam* damage actions under the Sherman Act and the Clayton Act, actions which could not be brought or entertained in the Alabama courts. Such a destruction of a federal cause of action, such a denial of access to the federal courts to implement the public policies underlying the federal antitrust laws, can only exacerbate the conflict with the basic doctrine announced in the *Donovan* and *General Atomic* decisions.

II

The decision below further conflicts with this Court's announced "exception" to the basic rule enunciated in *Donovan* and *General Atomic.* That "exception," into which the court below sought to fit this case, states that an "exception has been made in cases where a court has custody of property, that is, proceedings *in rem* or *quasi in rem,*" and that "the state or federal court having custody of such property

has exclusive jurisdiction to proceed." 377 U.S. at 412. Deeming the Empire receivership to be an *in rem* proceeding in the state court, the Alabama Supreme Court has leapt to the conclusion that the state court may act to protect and preserve its *res* by enjoining the institution of an *in personam* federal court action.

That conclusion misreads the nature and meaning of the so-called "exception." In the principal case exemplifying the "exception," *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939), this Court stated that

> ". . . it is settled that where the judgment sought is strictly *in personam*, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are *in rem*, or *quasi in rem*, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to that of the other."

In other words, the "exception" exists only where both the state and the federal causes of action are *in rem* in nature, both seeking to possess and control the identical *res*. The "exception" is totally inapplicable where one of the proceedings is *in rem* and the other is *in personam*. That was precisely the situation encompassed in *Markham v. Allen*, 326 U.S. 490, 494 (1946), holding that where a state court has first acquired jurisdiction over a *res*, a federal court may still freely "exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court."[3]

In short, the *in rem* nature of the Alabama receivership proceeding does not entitle the state court to enjoin the institution of an *in personam* federal court action. In that situation, there is no likelihood of an unseemly conflict between state and federal courts over possession of the same *res;* their judgments expend themselves upon totally different legal interests – i.e., the property interests and the personal interests. And so in this case, any determination of the antitrust defendants' personal liability under the federal antitrust laws could have no effect upon, and could not deplete, the Empire assets possessed by the state court. It matters not that some of the parties and many of the events involved in the federal antitrust complaint are the same as those involved in the state receivership proceeding. What is important is that the ultimate judgments of the two courts would be quite consistent with each other, neither one affecting the interests adjudicated by the other.

The fact that the "exception" was not designed to be applied in this context suggests the totality of the conflict between the decision of the Alabama court and the decisions of this Court in *Princess Lida*, *Markham*, *Donovan* and *General Atomic*.

---

[3] In the converse situation, where an *in personam* action is first brought in a federal court to determine rights in a trust, the Court has held that the *in personam* nature of that action prevents the federal court from enjoining a subsequent *in rem* proceeding in a state court in a state where the trust property is located. *Mandeville v. Canterbury*, 318 U.S. 47 (1943).

III

The Alabama court sought to justify denying access to the federal courts by reference to the harassment, interference, delay and eventual stoppage of the state receivership proceedings that might ensue were the federal court action allowed to proceed. Such an approach to the problem only brings the Alabama decision into more conflict with the *Donovan* and *General Atomic* decisions.

As was noted in the *General Atomic* per curiam opinion, 98 S.Ct. at 79, *Donovan* presented "as compelling a case as there could be for permitting a state court to enjoin the further prosecution of vexatious federal proceedings . . . [and] the pendency of the federal action had the effect of rendering the state-court judgment ineffective . . . [but] We nevertheless overturned the state-court injunction." The answer to the Alabama court's concern with possible interference with the state receivership proceedings lies in this Court's proclamation that "Federal courts are fully capable of preventing their misuse for purposes of harassment" or any other projected kind of interference. *General Atomic*, 98 S.Ct. at 79.

Like the merits of a federal cause of action, the possibility of federal court interference with state court proceedings is not to be weighed in assessing a state court's power to enjoin *in personam* federal proceedings. The Alabama court's reliance on that potential is thus at war with the *Donovan* and *General Atomic* rulings of the Court. Perhaps even more significant is the conflict between the ruling below and the Supremacy Clause's guarantee of free access to the federal courts to seek redress of one's federal-type injuries. That conflict even extends to the First Amendment, which likewise guarantees free access to the courts as a component of the right to petition for redress of grievances. See *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1971); *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1 (1964).

CONCLUSION

The summary reversal of the state court injunction in the *General Atomic* case underscores this Court's continuing concern with the efforts of some state courts to block access to the federal courts to implement *in personam* federal causes of action. The instant case is but another troubling example of this kind of avoidance of the Supremacy Clause principles. The challenge here made to those principles should not be ignored.

For these reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 7, 1978

APPENDIX

Re: SC 2265
Shearn Moody, Jr., Appellant vs. State Ex Rel. Payne, etc., Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

* * * * * *

Application for rehearing overruled. No opinion written on rehearing.

* * * * * *

/s/ J. O. Sentell
Clerk, Supreme Court of Alabama

11-10-77

THE STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
SPECIAL TERM, 1977

Shearn Moody, Jr.

SC-2265 v.

State of Alabama, ex rel. Charles H. Payne, etc., et al.

Appeal from Jefferson Circuit Court

EMBRY, JUSTICE

This is an appeal, or in the alternative a petition for writ of mandamus, to review an order entered by the Circuit Court of Jefferson County denying Shearn Moody's motion for permission to file a complaint in the United States District Court for the Northern District of Texas. We deny the writ.

An excellent history of this controversy is reported in *Moody v. State, ex rel. Payne*, 295 Ala. 299, 329 So. 2d 73 (1976). There we quoted, and upheld, the circuit court's order and injunction of 6 January 1975; the crux of this appeal. That order enjoined Moody, and others, from filing any lawsuit, complaint, legal claim, or amendment thereto, which related to the receivership of Empire Life Insurance Company of America without the prior approval of the circuit court. Only a chronological summary of the events after the issuance of the 6 January 1975 injunction is needed for an understanding of this opinion.

On 23 June 1975, Moody requested permission from the circuit court to file an amended counterclaim in a civil action then pending in the United States District Court for the Northern District of Texas. Permission was granted 7 July 1975, however, Moody was denied leave to amend his counterclaim by the United States District Court. Thereafter, on 19 May 1976, Moody moved the circuit court for permission to institute a new suit in the United States District Court based upon the same claims asserted in the amended counterclaim. Moody's motion was denied without prejudice by the circuit court on 19 August 1976.

On 28 September 1976, Moody filed a pleading in the circuit court entitled "Motion for Permission to File Complaint," which renewed his request to file an independent action in the federal district court. The proposed complaint attached to that motion asserted a claim based on a violation of the Sherman and Clayton Anti-Trust Acts against the State of Texas, John G. Bookout, Alan W. Horne, Clay Cotten, and A. Gene Sykes. The circuit court, on 29 November 1976, denied that motion. Moody appeals and in the alternative prays for the writ of mandamus; both designed to review the propriety of the order denying his motion to file his action in the federal district court in Texas.

The order denying Moody's motion is not an appealable one for the same reasons the order in *Moody v. State, ex rel. Payne*, SC-2215 (Ms.), released contemporaneously with this opinion, is not. Mandamus is the proper method of review of the order since Moody seeks to compel the trial judge to permit him to file the Texas federal court action. The order falls within that category which are interlocutory in nature and as to which an adequate remedy is not available on appeal; e.g. denying a motion to strike a demand for jury trial. See *Whitman v. Mashburn*, 286 Ala. 209, 238 So. 2d 709 (1970).

Moody says the issue presented for review is whether an Alabama court may enjoin a party from instituting an action in a federal court asserting a claim under a federal statute. We would state it as whether: under the circumstances of this case; under the Constitutions of the United

States and Alabama; and the federal and Alabama law, the trial court had the authority to prohibit Moody from filing a complaint in federal court?

For an overview of other aspects of the liquidation proceedings involving Empire Life Insurance Company see *Moody v. State, ex rel. Payne*, 344 So. 2d 160 (Ala. 1977), and *Ex parte Moody*, 11 ABR 2192 (19 Aug. 1977).

Moody says that under the state and federal constitutions he has an unfettered right to file suit in federal court because his claim was based upon violation of the federal anti-trust laws. He says his right cannot be abrogated by a state court and cites *Donovan v. Dallas*, 377 U.S. 408 (1964), in support. *Donovan* was the subject of much discussion in *Moody v. State, ex rel. Payne*, supra, wherein we recognized as the law, the proposition that state courts are completely without power to restrain a federal court from proceeding with an *in personam* action. Moody argues that *Donovan* supports his position because the proposed action which he sought permission to file is a claim for money damages under the anti-trust laws; therefore, purely *in personam* in nature. Moody says further that the receiver and the receivership estate are not involved. We disagree.

In *Moody*, we also quoted the exception to the rule as stated in Justice Black's opinion in *Donovan:*

> "* * * An exception has been made in cases where a court has custody of property, that is, proceedings *in rem* or *quasi in rem*. In such cases this Court had said that the state or federal court having custody of such property has exclusive jurisdiction to proceed. * * * " 295 Ala. 299, 307.

We unequivocally held in *Moody* that the Empire receivership was an *in rem* or *quasi in rem* proceeding and the injunction of 6 January 1975 was a proper exercise of the circuit court's power. We adhere to that holding.

Hence, the sub-issue raised is whether Moody's proposed claim to be filed in federal court involved the Empire receivership proceeding. Again we answer in the affirmative. Our conclusion is drawn from a careful reading of Moody's proposed complaint. It names as defendants John G. Bookout, who was the receiver of Empire in Alabama until he was succeeded by Charles H. Payne; Alan W. Horne, former insurance commissioner of Arkansas; Clay Cotten, the insurance commissioner of Texas; and A. Gene Sykes, present insurance commissioner of Arkansas. The State of Texas was named as defendant to the extent its former Attorney General Martin, Clay Cotten, and other agents of the state were acting within the scope of their authority. All of the alleged defendants were named in the 6 January 1975 injunction either personally or in a capacity related to the Empire receivership.

Although Moody's proposed complaint alleges the action arises under the federal anti-trust laws, the complaint centers around an alleged conspiracy of the named defendants. Paragraph four of the complaint states:

> "4. Defendants State of Texas, Bookout, Horne, Cotten, and Sykes have entered into one or more illegal plans, compacts and conspiracies and courses of conduct between and among themselves and one or more of the following persons: Crawford Martin, Attorney General of the State of Texas, Charles E. (Buster) Hunter, former Deputy Insurance Commissioner of the State of Alabama, Richard Marcus Goode an insurance company broker, Stuart Hopps, an insurance company broker, and other unnamed defendants presently unknown to Moody, secretly

and illegally, to use the powers of their respective offices, in abuse and in excess of their authority, to wrest and to separate control of the management of the affairs of Empire from Moody; to interfere with Moody's relationship with Empire as controlling stockholder, Chairman of the Board and President of Empire; to prohibit Moody from conducting business through Empire; to place Empire into receivership; prevent its rehabilitation; force its reinsurance and to suppress, eliminate and destroy Moody in the insurance business and Empire as a viable entity competing in the insurance business in Alabama, Texas, Arkansas and elsewhere all for Defendants own personal and political purposes and profits. Alternatively, the above-mentioned acts and practices in restraint of trade and for the purpose of interfering with business relationships of Moody were engaged in by the above-named Defendants, individually and said defendants were aided and abetted in such acts and practices by other named Defendants and additional parties not named as Defendants. The illegal plans and actions of Defendants were not discovered by Moody until after June, 1974. The above-mentioned acts of the named Insurance Commissioners were conducted under color of their office as Insurance Commissioners but known by said Defendants to be illegal and outside the scope of the authority granted by their office and were undertaken intentionally, knowingly and willfully, without substantial justification and with intent to interfere with the business relationship between Empire and Moody and with intent to force Moody and Empire out of the insurance business in Defendants' states."

Paragraph five of the complaint concerns an important aspect of any receivership proceeding – valuation of an asset. It reads:

> "5. The background of the above-described conspiracy and actions of Defendants is as follows: From 1964 to 1968, Empire, with its principal asset as 2/5 of the 1/8 life estate interest in the Libbie Shearn Moody Trust, acquired and merged or reinsured into it the following companies in states outside of Alabama: Consolidated American Life Insurance Co., Chicago, Illinois (1964), Empire Life Insurance Company of America, Little Rock, Arkansas (1965), National Empire Life Insurance Co., Dallas (1968), American Trust Life Insurance Co., Wichita Falls, Texas (1968), Capital Security Life Insurance Co., Springfield, Illinois (1968), and Centennial Reserve Life Insurance Co., Great Falls, Montana (1968). Pursuant to an examination conducted by the Insurance Departments of the States of Texas, Arkansas and Alabama, as of December 31, 1965, the Moody Trust interest valuation of $14,213,440 had been expresssly approved by the Insurance Commissioners of Arkansas, Texas and Alabama. In the majority of the mergers and reinsurances engaged in by Empire in 1964 through 1968, this trust interest valuation again was expressly approved and ratified by the Insurance Commissioners of the States of Arkansas, Texas and Alabama. For example, in 1968, Empire reinsured American Trust Life Insurance Company and this reinsurance was approved by Defendant Cotten in 1968 after a hearing in which Cotten found that Empire was in fact solvent, which finding was predicated upon the aforementioned $14,213,440 valuation."

Considering the proposed complaint, and the parties sought to be impleaded as defendants, there is no question the action inextricably involves the Empire receivership.

Viewed as a whole, the picture is clear that the proposed action was nothing more than another ploy of Moody's to interfere with, delay and eventually stop the Empire receivership proceeding. As such, the proposed action falls within the operative ambit of the 6 January 1975 injunction; thus the circuit court's order denying Moody's request cannot be considered erroneous or an abuse of discretion.

For the reasons stated herein, we uphold the circuit court's order denying Moody's request to file an independent action in federal court.

WRIT DENIED.

Torbert, C.J., Bloodworth, Jones and Almon, JJ., concur.

I, J.O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court. Witness my hand this 9 day of Sep. 1977.

/s/ J. O. Sentell
Clerk, Supreme Court of Alabama

IN THE CIRCUIT COURT
TENTH JUDICIAL CIRCUIT
OF ALABAMA
EQUITY DIVISION

CASE NO. 171-687

[Filed Nov. 29, 1976]

STATE OF ALABAMA, EX REL
JOHN G. BOOKOUT, COMMISSIONER OF INSURANCE,
Plaintiff,

v.

EMPIRE LIFE INSURANCE COMPANY OF AMERICA, an Alabama Corporation,
Defendant,

AND SHEARN MOODY, JR.,
Intervenor.

ORDER

On September 28, 1976 the Intervenor, Shearn Moody, Jr., filed a "Motion for Permission to File Complaint." The Court has heared statements and arguments of Counsel in support of said motion and

Accordingly, it is considered, ordered, adjudged and decreed by the Court as follows:

ONE: That the Motion for Permission to File Complaint heretofore filed by the Intervenor, Shearn Moody, Jr., is hereby denied.

DONE and ORDERED this the 29th day of November, 1976.

/s/ W. G. Barber
CIRCUIT JUDGE, In Equity Sitting